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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

VICTOR M. CHAVEZ,

Plaintiff, Cross-defendant and  
Appellant,

v.

COLFIN AI-CA 4, LLC,

Defendant, Cross-complainant and  
Respondent.

E064980

(Super.Ct.No. MCC1301708)

OPINION

APPEAL from the Superior Court of Riverside County. Raquel A. Marquez,  
Judge. Affirmed.

Victor M. Chavez, in pro. per., for Plaintiff, Cross-defendant and Appellant.

Cunningham & Treadwell, Cunningham, Treadwell & Bartelstone, Francis J.  
Cunningham III and David S. Bartelstone for Defendant, Cross-complainant and  
Respondent.

Plaintiff, cross-defendant and appellant Victor M. Chavez appeals the grant of summary judgment and adjudication in favor of defendant, cross-complainant and respondent Colfin A1-CA 4, LLC (Colfin).

On May 6, 2005, Chavez executed a note and deed of trust in the amount of \$398,000 in favor of IndyMac Bank Mortgage Services (IndyMac) secured by property located at 45277 Callesito Burgos in Temecula (the Property). The note and deed of trust were acquired by OneWest Bank. Chavez stopped making mortgage payments, and a loan modification, which he tried to negotiate with IndyMac, failed. The Property was sold at a Trustee's Sale the morning of April 15, 2013, and the Trustee's Deed Upon Sale for the Property (the Deed) was filed on May 2. Chavez filed for Chapter 13 bankruptcy (Bankruptcy Petition) the afternoon of April 15 in the United States Bankruptcy Court for the Central District (Bankruptcy Court).

Chavez filed a third amended complaint (TAC) against IndyMac and Colfin claiming the Trustee's Sale should not have occurred and the filing of the Deed was void, because he filed the Bankruptcy Petition on the same day as the sale. Colfin filed a cross-complaint against Chavez seeking declaratory relief that it was the rightful owner of the Property. OneWest Bank, which asserted it was the proper party to action, successfully brought a demurrer. Colfin filed a motion for summary judgment and adjudication providing that the Trustee Sale occurred in the morning of April 15, 2013, and Chavez filed the Bankruptcy Petition in the afternoon. Further, in 2015, the Bankruptcy Court granted Colfin's request pursuant to 11 United States Code section 362(a) to annul the

stay in order for the Deed to be recorded without violating the stay. The trial court granted the motion for summary judgment and adjudication.

Chavez claims in this appeal there were triable issues of fact as to whether the Bankruptcy Petition stayed the Trustee's Sale. Further, even if the Trustee Sale was proper, since Colfin filed the Deed after the Bankruptcy Petition was filed, it is void. We conclude the motion for summary judgment and adjudication was properly granted.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. FACTUAL HISTORY**

The following facts are taken from the undisputed material facts and the documents attached to Colfin's request for judicial notice. Chavez, along with his wife, purchased the Property in 1994 as joint tenants. Chavez took title as the sole owner in 2002 and transferred the Property to the Victor Manuel Chavez Trust in December 2005. In 2005, Chavez obtained a \$398,000 loan from IndyMac Bank, which was secured by the Property.

Chavez failed to make payments on the loan and a notice of default was filed. OneWest Bank took over the loan. NDEx West was named Trustee and on March 22, 2013, recorded a Notice of Trustee's Sale for the Property, which was set for 9:00 a.m. on April 15, 2013.

At 9:39 a.m. on April 15, 2013, an agent for Colfin bid \$295,000 at the Trustee's Sale. This was the highest bid and Colfin's agent gave cashier's checks to NDEx West for payment on that date. On April 15, 2013, at 3:43 p.m., Chavez filed the Bankruptcy

Petition. On May 2, 2013, the Deed was recorded showing Colfin as the purchaser of the Property.

Colfin filed a motion to reopen bankruptcy in the Bankruptcy Court pursuant to 11 United States Code section 350 and Federal Rules of Bankruptcy Procedure 5010. On June 11, 2015, the Bankruptcy Court granted Colfin relief from automatic stay under 11 United States Code section 362(d)(1), which annulled the stay retroactively to the filing of the Bankruptcy Petition. Notice of entry of judgment was served on Chavez on June 13, 2015.

B. PROCEDURAL HISTORY

1. *COMPLAINT AND CROSS-COMPLAINT*

Chavez filed the TAC on July 10, 2014, against Colfin and IndyMac. His first cause of action was for quiet title against Colfin. Chavez alleged he was the rightful owner of the Property as he had filed bankruptcy on the same day as the Trustee's Sale. The second and third causes of action were against IndyMac for continuing with the Trustee Sale despite concurrently negotiating a loan modification with him. Chavez's fourth cause of action was against Colfin for constructive trust alleging that since the Property was part of the bankruptcy estate, Colfin held the Property in constructive trust for Chavez's benefit. Chavez's fifth cause of action was for cancellation of written instrument seeking to void the Deed.

OneWest Bank filed a demurrer stating it was the correct party to the lawsuit, not IndyMac, and that the TAC failed to state sufficient facts to constitute a cause of action against it. Colfin filed an answer to the TAC.

Colfin filed a cross-complaint for declaratory relief. Colfin sought in its first cause of action declaratory relief that the Trustee Sale was valid because it occurred prior to the filing of Chavez's Bankruptcy Petition. In the second cause of action, Colfin alleged the Trustee's Sale did not violate the automatic stay. Finally, the third cause of action for quiet title sought to quiet title as of April 15, 2013.

On September 19, 2014, the trial court sustained the demurrer as to the second and third causes of action against OneWest Bank.

Chavez filed an answer to the cross-complaint.

2. *MOTION FOR SUMMARY JUDGMENT AND ADJUDICATION*  
*FILED BY COLFIN*

On September 14, 2015, Colfin filed its motion for summary judgment and adjudication (Motion). Colfin alleged the undisputed facts showed the Trustee's Sale occurred prior to the Bankruptcy Petition being filed. Further, the postpetition recording of the Deed was valid and enforceable because the Bankruptcy Court retroactively annulled the automatic stay pursuant to 11 United States Code section 362(d)(1). Chavez was not entitled to relief on any of his causes of action. Further, Colfin was entitled to summary adjudication on the cross-complaint for the same reasons.

Colfin submitted a declaration from David S. Bartelstone in support of the Motion. Bartelstone subpoenaed the records that showed the Trustee's Sale occurred at 9:39 a.m. on April 15, 2013, and that Colfin tendered the money for the Property on that day. Also attached to the Motion were requests for admissions and Chavez's responses. In the responses, Chavez admitted he never tendered the balance due on the mortgage for the

Property and that Colfin had no knowledge of the loan modification attempt with IndyMac. He refused to answer whether his Bankruptcy Petition was filed on April 15, 2013, at 3:43 p.m.

3. *CHAVEZ'S OPPOSITION TO COLFINS' MOTION FOR  
SUMMARY JUDGMENT AND ADJUDICATION*

Chavez filed his opposition to the Motion on November 12, 2015 (Opposition). Chavez provided his own declaration in lieu of testimony. He declared IndyMac continued to work with him on a loan modification right up until the Trustee's Sale. He stated he filed the Bankruptcy Petition on April 15, 2013, but did not acknowledge the time it was filed. He attached as an exhibit the "Notice of Chapter 13 Bankruptcy Case Meeting of Creditors" but the document did not provide a time when the Bankruptcy Petition was filed. He also attached the fax cover sheets to IndyMac for the Bankruptcy Petition, which had the time of 4:15 p.m. Additionally, attached was a notice of bankruptcy filing that stated the case was filed on April 15, 2013 at 3:43 p.m.

4. *COLFINS' REPLY TO CHAVEZ'S OPPOSITION*

Colfin filed its Reply to the Opposition on November 23, 2015.<sup>1</sup> Colfin objected to any reference to an irregularity in the Trustee's Sale as a demurrer had been granted disposing of the claims against IndyMac. Colfin contended the Trustee's Sale occurred six hours prior to Chavez filing the Bankruptcy Petition. Nothing in the Opposition

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<sup>1</sup> Colfin referred to Chavez's separate statement of material facts in the Opposition. These facts do not appear in the record and Chavez in his opening brief refers only to the facts set forth in his declaration.

created a triable issue of material fact. Colfin also filed objections to the declaration provided by Chavez.

#### 5. *RULING*

On November 30, 2015, the trial court considered the Motion. There was no oral argument. It granted Colfin's request for judicial notice and overruled all of the objections made by Colfin to the evidence provided by Chavez. On November 30, 2015, it issued its opinion granting the Motion. It accepted all of the undisputed material facts presented by Colfin as uncontroverted and found the documents supported granting the Motion.

In its analysis, the trial court found Colfin submitted evidence that it purchased the Property for value and in good faith. Colfin had no notice of attempts by Chavez to modify his loan with IndyMac. Colfin had established it was a bona fide purchaser of the Property. Moreover, by granting Colfin's annulment of the stay motion, the Bankruptcy Court determined the recording of the Deed did not violate the automatic stay. Chavez presented no evidence in support of his opposition. All of Chavez's claims failed as a matter of law. Colfin was ordered to submit a proposed form of judgment showing that the Motion was granted.

The final judgment order was filed on February 4, 2016, granting the Motion and entering judgment in favor of Colfin on the cross-complaint.

## DISCUSSION

### A. STANDARD OF REVIEW

“A trial court will grant summary judgment where there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. A defendant moving for summary judgment must prove the action has no merit. He does this by showing one or more elements of plaintiff’s cause of action cannot be established or that he has a complete defense to the cause of action. At this point, plaintiff then bears the burden of showing a triable issue of material fact exists as to that cause of action or defense.” (*Towns v. Davidson* (2007) 147 Cal.App.4th 461, 466.)

“Since summary judgment motions involve purely questions of law, we review the granting of summary judgment de novo. [Citation.] Because the facts here ‘are generally undisputed, only legal issues are presented.’” (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.)

Because we review this matter after summary judgment was entered in favor of Colfin, we consider the facts most favorably to Chavez. We liberally construe Chavez’s evidentiary submissions, strictly construe the evidence submitted by Colfin, indulge all reasonable inferences in support of Chavez, and resolve all evidentiary doubts or conflicts in favor of Chavez. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769.)

### B. ANALYSIS

Chavez contends there were triable issues of fact as to whether his filing of the Bankruptcy Petition preceded the Trustee’s Sale. He insists that as soon as his



Bankruptcy Petition was filed all matters pertaining to the Property were stayed. He claims on appeal there was a dispute as to the time of the Trustee's Sale. In addition, he claims that even if the Trustee's Sale occurred prior to his Bankruptcy Petition being filed, because the Deed was not recorded until after the Bankruptcy Petition was filed, he retained legal title to the Property. He contends the Trustee had to obtain relief from the automatic stay before transferring the Property to Colfin.

Chavez's first cause of action was for quiet title. A complaint for quiet title must describe the property that is the subject of the action, and state the basis for the plaintiff's claim to title and the adverse claims to the plaintiff's title against which a determination is sought. (Code Civ. Proc., § 761.020.) The fourth and fifth causes of action sought to void the Deed. Chavez failed to present any material facts that were in dispute as to the ownership of the Property.

The material facts are not in dispute as to the timing of the Trustee Sale and the filing of the Bankruptcy Petition. The only evidence presented established that the Trustee's Sale occurred at 9:39 a.m. on April 15, 2013. On April 15, 2013, at 3:43 p.m., Chavez filed the Bankruptcy Petition. Colfin presented in its uncontroverted material facts that the Trustee's Sale was complete prior to Chavez's Bankruptcy Petition. Chavez has presented no law to this court that the automatic stay applied to the prepetition Trustee's Sale and the uncontroverted evidence established the Trustee's Sale was complete prior to the filing of the Bankruptcy Petition.

Additionally, there was no dispute that Colfin was a bona fide purchaser of the Property. Civil Code sections 2924 through 2924k “provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale.” (*Brown v. Deutsche Bank National Trust Company* (2016) 247 Cal.App.4th 275, 280.) “““The purposes of this comprehensive scheme are threefold: (1) to provide the creditor/beneficiary with a quick, inexpensive[,] and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.”” (*Ibid.*) A bona fide purchaser for value ““is one who pays value for the property without notice of any adverse interest or of any irregularity in the sale proceedings.”” (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1250.)

Colfin provided the uncontroverted fact, and Chavez admitted, that it had no knowledge of any attempts by Chavez to obtain a loan modification from IndyMac. It was undisputed Colfin paid for the Property. Colfin was a bona fide purchaser of the Property.

Finally, Colfin properly obtained relief from the automatic stay in order to file the Deed. “Until the deed from a prepetition foreclosure sale is recorded, a debtor retains legal title to the property.” (*In re Engles* (Bankr. S.D. Cal. 1996) 193 B.R. 23, 26.) “““When a purchaser receives equitable title at a [foreclosure] sale, but legal title remains in a debtor, and the debtor thereafter files for bankruptcy, cause exists to lift the stay to allow the equitable owner to gain legal title.”” (*Ibid.*) “Furthermore, . . . , “[t]he trustee need only apply to the Court to obtain relief from the automatic stay to grant the

successful bidder a deed. Absent extraordinary circumstances, cause would exist to permit the granting of a deed.’ [Citation.] Of all the reasons provided for this conclusion, the most persuasive is to unite legal title with equitable title when title is split and the debtor holds only legal title. In these instances, the debtor has no beneficial interest in the property, and legal title alone is of little or no value to the estate.” (*Ibid.*)

It was not the Trustee, but Colfin, who filed for relief from the automatic stay.<sup>2</sup> Chavez did not raise below or on appeal that Colfin could not obtain relief. Here, in April 2015, Colfin filed a motion for relief of automatic stay, and annulment of the postpetition recording of the Deed. The motion was granted. As such, the Bankruptcy Court determined that the recording of the Deed did not violate the automatic stay. We are not in a position to question whether such relief should have been granted.

Summary judgment and adjudication was proper because Colfin established it was the rightful owner of the Property based on the Trustee’s Sale occurring prior to the filing of the Bankruptcy Petition, it was a bona fide purchaser at the Trustee’s Sale, and the Deed was properly filed. Chavez failed to establish a triable issue of fact existed as to any of his causes of action or defenses.

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<sup>2</sup> Under California Civil Code section 2924h, subdivision (c), if Colfin had filed the Deed within 15 days of the Trustee’s Sale, it would have automatically been deemed perfected as of 8:00 a.m. on the date of sale. Since Colfin waited more than 15 days, it had to request relief from the stay from the Bankruptcy Court.

## DISPOSITION

The judgment is affirmed. As the prevailing party, Colfin is awarded its costs on appeal.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

SLOUGH  
J.